

**TESTIMONY BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
APRIL 26, 2000  
RELATING TO CHANGES TO PROGRAMS  
FOR ELEMENTARY AND SECONDARY EDUCATION  
FOR INDIAN STUDENTS**

Mr. Chairman, Honored Members of the Committee, distinguished Guests, staff:

I am Dr. Roger Bordeaux. My current position is as Superintendent of the Tiospa Zina Tribal School in Agency Village, South Dakota. I appear today in my capacity as the Executive Director of the Association of Community Tribal Schools, Inc.(ACTS). ACTS represents a significant number of the 124 tribally controlled elementary and secondary schools funded by the Bureau of Indian Affairs. There are over 24,000 students in these tribally controlled elementary and secondary programs. The schools are in the States of Maine, Florida, North Carolina, Mississippi, Louisiana, south Dakota, Minnesota, North Dakota, Michigan, Iowa, Wisconsin, Kansas, Wyoming, Oklahoma, Montana, California, Washington, Idaho, Nevada, Arizona, and New Mexico. Our mission is to "assist community tribal schools toward their mission of ensuring that when students complete their schools, they are prepared for lifelong learning and that these students will strengthen and perpetuate traditional tribal societies.

We are here today to talk about the 2nd Committee Discussion Draft of the Senate Committee on Indian Affairs, making changes to programs influencing Indian education efforts. I would like to discuss a problem which is largely neglected in the current draft: FACILITIES AND CONSTRUCTION.

When people involved in Indian education meet, one universal topic of discussion and concern is the terrible state of facilities in general, and needed repair and improvement shortfalls.

Many of the facilities we use for providing Indian education services have existed over twice or three times the length of their expected useful life. The facilities are failing down. One Congressional report in the 1908s said we are educating Indian children in facilities in which Federal judges would not allow us to house prisoners. Yet, we have no choice. To date, we have been largely dependent on the Federal government and the Bureau for facilities for our programs, and they have not been forthcoming. The Bureau admits they have at least a \$742,640,817 unfunded backlog for education related facilities needs, repairs and replacements (date 1-4-99). Some say the backlog is even higher. Each year, the amount the Bureau requests for upkeep of education related facilities is over \$70,000,000 less than is needed just to stay even. This is programmed failure and deterioration. The Bureau reports a new school construction need of 99 facilities, yet only has a priority list for 17.

In 1997, the General Accounting Office issued a report that stated the schools "are at a dismal state of disrepair and are generally in worst condition than other schools nationally, even inner city schools." How did we ever come to such a situation??

Simply put, the Bureau has not requested the funding necessary to build new schools or maintain those for which it is responsible. For over 15 years, they have funded daily operation and maintenance at 60% of need. For the last 15 years, they have funded the Facilities improvement and repair account at less than the annual deterioration rate. With respect to repairs, they have used a top down system for designating repairs which does not take into account the need for all schools for routine maintenance and scheduled upkeep. For years, they have aggregated local projects to be done (often without the input of education officials) and then only asked for the funds needed for some. They have given funds to areas and agencies based on politics, not need, and used a priority system for construction which changes the relative ranking

of schools from one year to the next. They have done no long range planning or replaced enough schools each year. They have not responded to the system as it spiraled downward, out of control.

Yet, despite the fact that all in the business acknowledge the problem, little is done to remedy it. We support the greatly increased amount requested by the Administration this year for construction of new facilities. However, we have concerns regarding its passage. Also, we do not think, realistically, that a needed \$1 Billion dollars in effort from the Congress is likely. We are hopeful about talks regarding more money for tribal bonds, but absent revenues to pay their principle, we doubt this is the answer. We just have to face the fact - **we have to do better with the funds we have. We need a plan for immediate action!!!**

Yet, the draft before us is silent on the problem.

We recommend the following

-the establishment of two accounts for Tribal School Capital Improvement and Redemption/new construction. These funds would be based on an annual payment made to schools based upon the most equitable determiner - size. One of the payments would be placed in a separate account to defray the cost of routine maintenance and upkeep, such as a new boiler and roof repair. Expenditures from the fund would vary each year, depending on need, but the funds which are in the account have the added benefit of being increased by interest. Thus the Federal payment is augmented. The second account would be also based on an annual per capita payment and would be for long term accretion and interest bearing. It would remain available to the school for replacement costs, as the school is able and as the school determines.

These seem like such simple ideas, we wonder why they have not been tried in the past. The key is that all schools would be treated similarly, with no school falling through the cracks and becoming part of a backlog. It runs on local control and decision making, taking out at least three bureaucratic levels. **Best of all, based on our projections, it runs on the current appropriation available. No new money is needed.**

-Schools should be allowed to make a local decision to use up to 5% of their existing revenues and income to help tribal government defray tribal bonds. Some may say that if the schools have "extra" money to fund such efforts, then they have too much money. That is facetious and insulting. If a family makes sacrifices in standards of living for medical care for the family, or to obtain more and better housing, do we say they have too much. Are we now in a situation where if people make the sacrifices to improve themselves, we have to say, "No - hold

them down". Remember, we are talking about local schools and tribal governments taking the extra step to meet what is really a Federal responsibility!!!. We will insist the school program remains accredited and safe, and that all student performance goals are met. However, some savings are possible we only want the chance to improve.

-As has been done in the past for other groups, let the government allow the issuance of tax exempt, Federally insured tribal bonds for education structures.

-Of particular importance, is the issue of maintaining building built with non-Federal funds. The schools, realizing help from the Federal government is not forthcoming, have applied to a number of States and foundation/tribes for local school buildings. some have been successful in obtaining facilities. Remember **THESE ARE PROGRAMS FOR WHICH THE FEDERAL GOVERNMENT IS RESPONSIBLE AND FACILITIES WHICH THE FEDERAL GOVERNMENT SHOULD PROVIDE**. Once built, these must be maintained, or rapidly, they begin to go down hill like Bureau facilities and form a health and safety threat to our children.

However, when it comes to maintenance, the Bureau says it will not include these building in the operations and maintenance formula. The reason given is that the money is Bureau money, and it can only be used for federal buildings. first of all, it is money for the education of Indian children, the Bureau just holds it. We are not asking for money for nonfederal programs. These are all Federal activities, they are just housed in buildings built through nonfederal effort. We need to have these buildings kept up. Otherwise, the Congressional efforts to get more tribal and private giving for these buildings will be seen as a sham, and will cease.

An effort has been made in the bill to stop the Bureau from taking funds off the facilities accounts for non-school activities, and we thank the Committee for this. However, in the larger context, nothing has been done on education. We support the proposed bill for bonding and ask the Committee to encourage the Bureau to enter into inter-agency agreements to utilize their expertise and funds. However, these are ephemeral hopes. We know that if the Senate takes no action helping us with construction in this reauthorization, the situation will only get worse, and we will be here gain, in the future, asking for assistance. Let us hope it does not take an accident such as in All the President's Men to obtain the relief to which Indian children are entitle.

## OTHER ISSUES

There are several other issues in the second draft of the Senate Committee on Indian Affairs, relating to the reauthorization of P.L. 100-297, which we feel we must address.

First of all, we oppose any suggestion by the Bureau to amend the statute to require that only grants directly with Indian tribes be allowed. Currently the statute allows grants with a tribe or tribal organization (such as a community or a school board). It has been this way since its inception, and we think it has worked well. Tribes have the right of first refusal already in the statute, and any organization is required to get a tribal resolution of support before it can even file an application. All the Bureau's proposal would do is add another level to the process, and cause the tribes to have to reconsider all existing applications.

Second, we are puzzled by a change between the first and second drafts. In the current law, two payments are made to deliver the program funds from the Bureau to the school. Grant schools receive a smaller first payment than Bureau school, and thus lose valuable control and interest. The first Senate draft remedied this situation, upping the amount of the first payment to all schools, Bureau operated and tribally controlled, to 85% of the amount to which they appear to be entitled under the Act. The second draft cut the amount for grants schools to 80%. Why? What have we done that we should be treated differently? We are aware of no problems either in the past or projected for the future. We ask that the Senate Committee language from the first draft be reinstituted, and the amount be put back to 85%.

Third, language was added in the second draft of the Committee language to apparently alter the application of the Federal Torts Claims Act. The section is very poorly drafted, and we are unsure of what is meant to be accomplished. We would like to have the language explained, and even then, we know of no reason the current language should be changed.

Finally, a small change, but our reaction to it may inform you as to how we feel about the Bureau. Language in the current section incorporating by reference certain section of the Self-Determination Act was changed to omit the fact that these sections are to be administered with

respect to grants schools as they are with respect to contract schools. IT may be only common sense, but we are afraid the Bureau will seize it as an excuse to interpret these sections differently for the two classes of schools, meaning that the results we thought would be obtained from incorporation would be different. We ask that the language be restored.

## CONCLUSION

Again, thank you for letting me testify. The tribally controlled schools stand ready to do the best job possible with the tools you give us. We count on your understanding and assistance.